



PREVENTIVE LAW SERIES

UNIFORMED SERVICES EMPLOYMENT & REEMPLOYMENT RIGHTS ACT



Prepared by:
Legal Assistance Department
Region Legal Service Office Southwest
3395 Sturtevant Street Suite 9
San Diego CA 92136-5072
(619) 556-2211

WHAT IS THE UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT?

The Uniformed Services Employment and Reemployment Rights Act (USERRA) prohibits discrimination against persons because of their service in the Armed Forces, the Reserves, or the National Guard. USERRA prohibits an employer from denying any benefit of employment on the basis of an individual's membership, application for membership, performance of service, application for service, or obligation for service in the uniformed services. USERRA also protects the right of veterans, reservists, National Guard members, and certain other members of the uniformed services to reclaim their civilian employment after being absent due to military service or training.

WHOM DOES USERRA PROTECT?

The law seeks to ensure that those who serve their country can retain their civilian employment and benefits, and can seek employment free from discrimination because of their service. USERRA potentially covers every individual who serves or has served in the uniformed services and applies to all employers in the public and private sectors, including Federal employers. USERRA provides enhanced protection for disabled veterans, requiring employers to make reasonable efforts to accommodate the disability. However, in order to take advantage of USERRA protection, service members must be aware of deadlines and notice requirements.

WHAT IS AN EMPLOYER REQUIRED TO PROVIDE TO A RETURNING SERVICEMEMBER UPON REEMPLOYMENT?

There are four basic entitlements:

- Prompt reinstatement (generally a matter of days, not weeks, but will depend on the length of absence).
- Accrued seniority as if continuously employed. This applies to rights and benefits determined by seniority, including status, rate of pay, pension vesting, and credit for the period for pension benefit computations.
- Training or retraining and other accommodations. This is particularly applicable in case of a long period of absence or service-connected disability.
- Special protection against discharge, except for cause. The period of this protection is 180 days following periods of service of 31-180 days. For periods of service of 181 days or more, it is one year.

WHAT IF A RETURNING SERVICEMEMBER IS DISABLED?

USERRA also requires the employer to make "reasonable efforts" to accommodate persons with a disability incurred or aggravated during military service. If a person returns from military service and is suffering from a disability that cannot be accommodated by reasonable employer efforts, the employer is to reemploy the person in some other position he or she is qualified to perform and which is the "nearest approximation" of the position to which the person is otherwise entitled, in terms of status and pay, with full seniority. A disability need not be permanent to confer rights under USERRA. For example, if a person breaks a leg during annual training, the employer may have an obligation to make reasonable efforts to accommodate the broken leg or to place the person in another position until the leg has healed.

IF DISCRIMINATION IS ALLEGED

USERRA provides that a denial of employment or an adverse action taken by an employer will be unlawful if a service connection was a motivating factor (not necessarily the only factor) in the denial or adverse action "unless the employer can prove that the action would have been taken in the absence of such membership, application for membership ... or obligation."

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FOR LEGAL ADVICE IN A PARTICULAR SITUATION, ALWAYS CONSULT WITH AN ATTORNEY.

REMEDIES

Conflicts between service members and their civilian employers regarding USERRA are often resolved informally by the Employer Support of the Guard and Reserve (ESGR), without resort to formal legal or administrative processes. A resolution facilitated by ESGR is the most convenient and quickest remedy for any alleged claim of USERRA violation.

Alternatively, there are formal legal remedies available to service members who are unable to resolve their claims with the help of ESGR. These legal remedies to a claimant may flow from two different processes. The first is the administrative route (handled by the United States Department of Labor). The second is the litigation route (handled by the U.S. Attorney General or the Office of Special Counsel). Remedies may differ depending on which route is chosen. Remedies available through these routes can include: return to a job, back pay, lost benefits, lost promotional opportunities, retroactive seniority, pension adjustments, corrected personnel files, and restored vacation.

The claimant can only recover dollar-for-dollar that which was lost, with no recourse to any punishment of, nor penalty on, the employer if the legal route of enforcement is taken. The courts can require the employer to comply with the law, and restore all compensation referred to above. Where violation is considered willful, the court may double any amount due as damages. The court may NOT, however, impose any punitive damages under USERRA.

WHOM DO I CALL?

If you face any difficulties enforcing your rights under USERRA, contact the ESGR, an office of the Department of Defense established to facilitate the resolution of conflicts that may arise between service members and their civilian employers regarding USERRA. To request assistance from ESGR, you may either call 1-800-336-4590 between 0800 and 1800 Eastern Standard Time to speak with an ESGR representative or you may fill out an assistance request form located on the ESGR website at www.esgr.mil. An ESGR representative will contact you to discuss your rights and potential resolutions.

If you are unable to resolve your USERRA complaint with the help of ESGR, you may seek assistance through the Department of Labor's Veterans' Employment and Training Service (VETS), the legal enforcement authority for USERRA claims. VETS provides assistance to all persons having claims under USERRA, including Federal and Postal Service employees. If resolution is unsuccessful following an investigation, the service member may have his or her claim referred to the Department of Justice (DoJ) for consideration of representation in the appropriate District Court, at no cost to the claimant. If violations under USERRA are shown to be willful, the court may award liquidated damages. Federal and Postal Service employees may have their claims referred to the Office of Special Counsel for consideration of representation before the Merit Systems Protection Board (MSPB). Individuals who pursue their own claims in court or before the MSPB may be awarded reasonable attorney and expert witness fees if they prevail. Service member employees of intelligence agencies are provided similar assistance through the agency's Inspector General. **Please note: the DoJ will not review or accept a case unless the DoL first handled it. The DoL provides an online advisor at: <http://www.dol.gov/elaws/userra.htm>. The online advisor will help you to file a complaint if needed.**

LEGAL ASSISTANCE SERVICES

A legal assistance attorney is available by appointment Monday from 0800 - 1100 and 1300 - 1500, Tuesday through Thursday (excluding the fourth Wednesday of the month) from 0900 - 1100 and 1300 - 1500 and Friday from 0900 - 1045. Powers of attorney and notaries are available at the same times. For more information, please contact the Legal Assistance Office, located in Building 56, 32nd Street Naval Station, San Diego, CA, by telephone at (619) 556-2211, or our office at Naval Air Station North Island – Coronado, Building 318 – Second Deck, above the Fleet and Family Support Center, Saufley Road, by telephone at (619) 545-6437.

RESOURCES:

Employer Support of the Guard and Reserve: (800) 336-4590; www.esgr.mil; 1555 Wilson Blvd., Suite 200, Arlington, VA 22209-2405

Department of Labor: (866) 4USA-DOL; www.dol.gov/vets

San Diego Office: 8977 Activity Road, San Diego, 92126; (619) 545-6008

38 U.S.C. §§ 4301 et seq. (2012)

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